

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES E. WINNER, JR.,

Plaintiff,

v.

ETKIN & COMPANY, INC.

Defendant.

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2:07-cv-903

MEMORANDUM OPINION AND ORDER

Before the Court for consideration is a MOTION FOR RECONSIDERATION (*Document No. 15*), filed by Defendant Etkin & Company, Inc. (“ECI”) with a brief in support. Plaintiff James E. Winner, Jr. (“Winner”) has filed a response and brief in opposition (*Document Nos. 17, 18*). The motion is ripe for decision.

The background is incorporated as set forth in the Court’s Memorandum Order dated September 6, 2007, which denied ECI’s motion to dismiss the complaint. ECI is a small investment firm. This case arose out of ECI’s efforts to secure a buyer for Winner Steel, Inc., which is allegedly controlled by Winner. On May 17, 2005, ECI and the “Company” entered into an agreement that provided for a Success Fee if ECI found a buyer. James Winner signed that agreement in his capacity as Chairman of the Company. The agreement contains an arbitration clause. ECI filed a claim in arbitration against the Company and James Winner in his individual capacity. Winner filed the instant suit for declaratory relief to enjoin or stay the arbitration. At issue is whether James Winner, in his individual capacity, is bound by the arbitration clause contained in the agreement.

The Court addressed the motion to dismiss in somewhat cursory fashion because, in the Court’s view, it was clearly not meritorious. The motion for reconsideration has even less merit. James Winner, in his individual capacity, is simply not a party to the contract. Without that essential precondition, none of ECI’s other arguments is relevant. Moreover, as Plaintiff

correctly points out, Defendant has not satisfied the more rigorous standard necessary to justify reconsideration.

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED that the MOTION FOR RECONSIDERATION (*Document No. 15*), filed by Defendant Etkin & Company, Inc. is **DENIED**.

SO ORDERED this 24th day of September, 2007.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

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